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April 22, 1992

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United States Environmental
Protection Agency, Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Re: Knapheide Mfg. Co.
Docket No. VII-92-H-0008

Dear Mr. Richards:

We have been authorized by our client, Knapheide Mfg. Co. ("Knapheide"), to set forth in this letter an offer to compromise the above-referenced matter on an amicable basis.

BACKGROUND

The United States Environmental Protection Agency, Region VII ("EPA") recently issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") alleging certain violations by Knapheide of the Resource Conservation and Recovery Act ("RCRA"). Commencing prior to the issuance of the Complaint, and since that time, Knapheide has taken various steps to review and modify its environmental compliance and engineering program, including the following:

- establishment of corporate environmental policy
- restructuring of corporate organization to create a "Facilities and Environmental Engineering Department," with a Manager whose job duties are allocated 80% to environmental compliance and waste management
- development of various internal environmental compliance procedures, including waste manifesting procedures and substantial additions to waste handling procedures



R00080365

RCRA Records Center

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- investigation of alternate waste management methods, including resource recovery incineration and alternate painting technologies using reduced VOC solvents
- elimination of underground storage of solvents and proper closure of underground storage tanks with the Missouri Department of Natural Resources ("MDNR")

The allegations contained in the Complaint, and the penalties proposed therefor by the EPA are set forth on the attached Exhibit 1. Knapheide contends strongly that the proposed penalties are inappropriate based upon those factors which the EPA must consider pursuant to §3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3) (as discussed in the 1990 RCRA Civil Penalty Policy), including (a) the seriousness of the violations, (b) any good faith efforts by a respondent to comply with applicable requirements, (c) any economic benefit accruing to a respondent, and (d) any other matters which justice may require. Following is a discussion of some of those relevant factors.

COUNT I

Failure to Conduct Hazardous Waste Determination

Based upon vendor-supplied information and process knowledge (as allowed by 40 C.F.R. §262.11(c)(2)), in 1980, Knapheide submitted an Emissions Inventory Questionnaire to the MDNR and filed a Generator Registration Form with EPA. In 1986, Knapheide filed a Generator Registration Form with MDNR. Apparently Knapheide incorrectly identified its waste stream as ignitable due to its combustibility, since later test results indicated that the waste stream may not in fact have been ignitable.

On the basis of the erroneous conclusion that the waste stream had to be handled as an ignitable waste, Knapheide adequately containerized and effectively handled the waste to address any potentially hazardous waste characteristics that may have been present, even if unidentified, in the waste stream.

Additionally, in 1988, Knapheide obtained waste profile data on its listed hazardous wastestreams (xylene and MEK) and, due to the shutdown of the on-site incinerator, obtained profile data in 1989 on its paint-related wastes.

An assessment of penalty for Knapheide's failure to make a hazardous waste determination should therefore warrant, at most, a

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classification of the lowest penalty assessable in the "moderate" category of the "Potential for Harm" axis of the penalty matrix. As will be further discussed in Count II, the probability of exposure due to the lack of identification was low because Knapheide was containerizing the waste and handling it as though it were ignitable, and the potential seriousness of contamination which might result from an inadvertent release was low due to the physical state of the waste.

COUNT II

Storage and Treatment of D007 Hazardous Waste Without Interim Status or a Permit, Failure to Develop Closure Plan, and Failure to Provide Financial Assurance and Liability Coverage for Closure

During the period of incineration of the paint-related wastes, Knapheide staged containerized waste paint filters and overspray paper adjacent to the incinerator. Incinerator by-product (ash) was periodically removed from the incinerator and containerized until manifested and disposed of in May, 1991.

After the incinerator was shut down in September, 1989, Knapheide continued to stage paint-related wastes (excluding ash) until an alternate disposal method could be determined. In the process of exploring such other alternate disposal methods, Knapheide met with MDNR regarding the proposed installation of a new incinerator, and in conjunction therewith, conducted a test of the paint-related waste material. Those results, dated March, 1991, indicated that the paint-related wastes contained detectable concentrations of chromium. Waste staging procedures being implemented by the company at the time for an ignitable waste adequately addressed the potential hazards associated with heavy metal-containing wastes (i.e., segregation and containerization).

Chrome-containing paint was not used in Knapheide's paint process until 1986 and, according to Knapheide's Material Safety Data Sheets, the paint products used by the company prior to that time did not contain heavy metals. Therefore, the maximum period of time during which Knapheide may have treated a D007 hazardous waste in the on-site incinerator was from 1986 until the shutdown of the incinerator in September, 1989. In addition, the maximum period of time during which Knapheide may have stored a D007 hazardous waste was from September, 1989 until May, 1991 (at which time all containerized waste (including incinerator ash) was manifested and shipped for off-site disposal at a resource recovery facility). Although Knapheide may have exceeded the allowable time

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for storage of a characteristically hazardous waste, any such waste was adequately containerized in airtight 55-gallon metal drums.

Therefore, the "Risk of Exposure" associated with storage of paint-related waste is low because of the type and method of storage, the physical nature of the waste, low potential likelihood of release and no evidence of a release.

The potential for release of paint-related wastes from such containers in a quantity and concentration that may pose a threat to human health and the environment is very low. First, containers were sealed during storage so that even if a container would have been upset (which was never the case), spillage of its contents was unlikely. Second, the solid waste paint residue is bound to absorbent material; since the waste is in a less mobile physical state, if the contents of a container would have been spilled (which was never the case), paint residues would not have been readily released into the environment nor transported into other media (such as air or groundwater). Third, if the ash within a container would have been spilled (which was never the case), most heavy metals contained within the absorbent material (including chromium) would have been thermally oxidized through combustion and therefore more chemically stable; any leachable waste constituent which might be present in either the ash or the paint residue bound to absorbent material would not have been released unless exposed to the weather for a substantial period of time (which was never the case).

Therefore, because of the type and method of storage, the physical nature of the waste, low potential likelihood of release and no evidence of a release, the "Risk of Exposure" associated with Knapheide's storage of paint-related waste most appropriately fits within the "moderate" category of the "Potential for Harm" axis of the penalty matrix.

COUNT III

Failure to Label Container as "Hazardous Waste"

Containers of paint-related waste were accumulated at satellite storage locations immediately adjacent to the work area where the wastes were generated. As required by Knapheide's operating procedures, such containers were labeled with waste type, and were kept sealed at all times except during addition of new waste materials from the same work area. In fact, Knapheide's waste stream consists of paint related materials which, by their nature, are compatible. Thus, the likelihood of commingling the contents of the containers with incompatible wastes was low. The

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containers were then moved directly to the staging area, and kept sealed during transport until off-site disposal.

Therefore, the "Risk of Exposure" associated with the failure to label containers as hazardous waste was low because of the type and method of storage, the physical nature of the waste, and the operational procedures in effect regarding accumulation of and addition to waste materials. In addition, although Knapheide may have significantly deviated from the requirements of the regulation regarding labeling, some of the requirements were implemented as intended (as described above). An assessment of penalty for Knapheide's violation of the labeling requirement should therefore warrant, at most, a classification of the lowest penalty assessable in the "moderate" category of the "Potential for Harm" and "Extent of and Deviation from Requirement" axes of the penalty matrix.

COUNT IV

Failure to Retain Copies of Land Disposal Notifications

Knapheide regularly sent the required land disposal notifications with each manifest, but failed to keep copies of these notifications. This clerical error warrants appropriately, at the maximum, the smallest dollar amount under the "minor/minor" category of the penalty matrix.

COUNT V

Failure to Maintain Adequate Aisle Space

Knapheide maintained adequate aisle space in the liquid storage shed for regular inspections by personnel, and was in fact conducting such inspections and implementing most of the requirements of the regulation. Therefore, this violation warrants appropriately, at most, the smallest dollar amount under the "minor/moderate" category of the penalty matrix.

COUNT VI

Failure to Maintain Updated Contingency Plan

Knapheide did maintain a Contingency Plan stating procedures to be followed in the event of an emergency. The failure to update the Plan when the Emergency Coordinator changed is a violation which warrants appropriately, at most, an assessment of the smallest dollar amount under the "moderate/minor" category.

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COUNT VII

Failure to Maintain Training Documentation

Knapheide's appointed hazardous waste director did, in fact, have the appropriate qualifications or training as required under 40 C.F.R. §265.16(d)(4), but did not have a compilation of the same within one file. Such failure to maintain the documentation in one file should warrant appropriately, at most, the smallest dollar amount under the "moderate/minor" category of the penalty matrix.

COUNT VIII

Failure to Properly Manifest Hazardous Waste Shipments

The waste shipped under the manifests at issue was liquid waste (xylene/MEK) which was sent to a resource recovery facility for use as an alternate fuel. Typically, the fuel blending facility used its own transporter (i.e., a division of the facility), and all shipping logistics for transportation had been pre-arranged. Therefore, shipping instructions were clear that no alternate designated facility was allowed by Knapheide, and the waste could not, pursuant to the agreement with Knapheide, be deemed undeliverable by the resource recovery facility. Therefore, this violation should warrant appropriately, at most, the smallest dollar amount under the "moderate/minor" category of the penalty matrix.

CONCLUSION

Based upon the foregoing, each facet of which we are prepared to discuss in more detail in our settlement conference tomorrow (or thereafter, at your convenience), we believe that \$205,841.50 represents an appropriate penalty assessment for the violations alleged in the Complaint, allocated among the Counts as reflected on the attached Exhibit 2. Knapheide, therefore, offers to settle the issues involved in the Complaint on the following basis:

- A. Immediate cash penalty of \$20,584.15.
- B. Agreed-upon penalty of \$185,257.35 to be suspended and discharged upon Knapheide's documentation of environmentally beneficial expenditures totalling no less than \$37,051.47 in each of the next five years.

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This letter and its contents (a) are confidential and should not be disclosed to the public without the prior written consent of our client, (b) do not constitute and should not be deemed to constitute an admission of liability for any purpose and (c) do constitute an offer of compromise and therefore no portion hereof shall be admissible in any proceedings of any kind for any reason.

We look forward to discussing this matter further with you tomorrow.

Very truly yours,


Sandra L. Oberkfell

SLO:mc

Enclosures

KNAPHEIDE MFG. CO.
DOCKET NO. VII-92-H-0008

EPA's Proposed Penalty

EXHIBIT 1

COUNT	ALLEGATION	PROPOSED PENALTY CLASSIFICATIONS		COMPONENTS			PROPOSED PENALTY
		Gravity	Multi-Day	Gravity	Economic Benefit	Multi-Day	
I	Failure to Conduct Hazardous Waste Determination	moderate/moderate	moderate/moderate	\$ 6,500.00	\$ 1,350.00	-0-	\$ 7,850.00
II	Storage and Treatment of D007 Hazardous Waste Without Interim Status or a Permit, Failure to Develop Closure Plan, and Failure to Provide Financial Assurance and Liability Coverage for Closure	major/major	major/major	22,500.00	659,166.00	537,000.00	1,218,666.00
III	Failure to Label Container as "Hazardous Waste"	moderate/major	moderate/major	9,500.00	-0-	232,700.00	242,200.00
IV	Failure to Retain Copies of Land Disposal Notifications	minor/minor	minor/minor	500.00	-0-	-0-	500.00
V	Failure to Maintain Adequate Aisle Space	minor/moderate	minor/moderate	1,000.00	-0-	-0-	1,000.00
VI	Failure to Maintain Updated Contingency Plan	moderate/minor	moderate/minor	4,000.00	-0-	-0-	4,000.00
VII	Failure to Maintain Training Documentation	moderate/minor	moderate/minor	4,000.00	-0-	-0-	4,000.00
VIII	Failure to Properly Manifest Hazardous Waste Shipments	moderate/minor	moderate/minor	8,000.00	-0-	-0-	8,000.00
	TOTAL PROPOSED PENALTY			\$ 56,000.00	\$660,516.00	\$769,700.00	\$1,286,216.00

Recalculation of EPA's Proposed Penalty

COUNT	ALLEGATION	PROPOSED PENALTY RECLASSIFICATIONS		PROPOSED PENALTY RECALCULATIONS				RECALCULATED PROPOSED PENALTY
		Gravity	Mult-Day	Gravity	Economic Benefit	Mult-Day*		
I	Failure to Conduct Hazardous Waste Determination	moderate/moderate	moderate/moderate	\$ 5,000.00	\$ 1,350.00	\$ -0-		\$ 6,350.00
II	Storage and Treatment of D007 Hazardous Waste Without Interim Status or a Permit, Failure to Develop Closure Plan, and Failure to Provide Financial Assurance and Liability Coverage for Closure	moderate/major	moderate/major	8,000.00	57,541.50**	71,600.00		137,141.50
III	Failure to Label Container as "Hazardous Waste"	moderate/moderate	moderate/moderate	5,000.00	-0-	44,750.00		49,750.00
IV	Failure to Retain Copies of Land Disposal Notifications	minor/minor	minor/minor	100.00	-0-	-0-		100.00
V	Failure to Maintain Adequate Aisle Space	minor/moderate	minor/moderate	500.00	-0-	-0-		500.00
VI	Failure to Maintain Updated Contingency Plan	moderate/minor	moderate/minor	3,000.00	-0-	-0-		3,000.00
VII	Failure to Maintain Training Documentation	moderate/minor	moderate/minor	3,000.00	-0-	-0-		3,000.00
VIII	Failure to Properly Manifest Hazardous Waste Shipments	moderate/minor	moderate/minor	6,000.00	-0-	-0-		6,000.00
	TOTAL RECALCULATED PROPOSED PENALTY			\$ 30,600.00	\$58,891.50	\$116,350.00		\$205,841.50

* Mult-day matrix amount multiplied by 179 days.

**See attached.

ATTACHMENT TO EXHIBIT 2

Economic Benefit Proposed Penalty Recalculation

Count II

1. \$ 8,385.50 Knapheide purchased its first supply of chromium-containing paint in February, 1986 from the Valspar Corporation. This paint product was used as a primer referred to as "vinyl wash". Prior to using the Valspar vinyl wash, Knapheide used a Valspar red oxide alkyd primer. This alkyd primer contained 5% by weight of iron oxide along with 5% by weight of silicic acid/magnesium salt. Therefore, on the basis of leachable toxic metals, Knapheide became subject to the regulatory framework concerning hazardous waste generation due to its paint-related waste in early 1986. Consequently, Knapheide should have filed a RCRA Part A application in mid-1986 at an estimated cost of \$5,000. The 1992 equivalent of this amount is calculated at \$8,385.50.
2. 15,850.00 Under Part A, Knapheide would have promptly closed the storage area under the same time frame being currently used (six months). Therefore, Knapheide would only need insurance coverage for an estimated six-month period. The 1992 equivalent of such insurance premium of \$25,000/year for six months (\$12,500) is calculated at \$15,850.
3. 30,684.00 Using the estimated generation rate of one drum per day of paint-related waste, but from 1986 (first usage of chromium containing paint) until shutdown of the Incinerator in September, 1989, 250 days per year for three years would equal 750 drums. On the basis of previous manifests, Knapheide has determined that each drum weighs 150 lbs., which would result in 112,500 pounds or a total of 51.14 metric tons. Using an estimated disposal cost of \$600 per metric ton, the resulting recalculation is \$30,684.
4. 2,622.00 No factual basis for alternate penalty calculation.
- \$57,541.50 TOTAL